



SOLANO COUNTY
Department of Resource Management

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Bill Emlen, Director
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April 15, 2011

Mr. Joe Grindstaff, Executive Officer
Delta Stewardship Council
990 Ninth Street, Ste 1500
Sacramento CA 95814

Re: Second Draft of Delta Plan/Solano County Comments

Dear Mr. Grindstaff,

The Delta legislation espouses the "Co-Equal Goals" as the organizational framework for the Delta Plan. Eight objectives are to be achieved within this framework. One of these objectives is to "protect and enhance the unique cultural, recreational and agricultural values of the California Delta as an Evolving Place". Solano County, as a local agency with significant land area within the Delta, is keenly focused on how the objective will be reflected in the Delta Plan. As noted in our comments on the first draft, Solano County could be impacted significantly by the Delta Plan and its implementation. The County has been very effective in preserving many acres of productive farmland in the Delta. Solano County farms in this area are highly sustainable and productive. We are concerned that we not be penalized for our thoughtful and responsible land use policies to preserve farmland by becoming a target for a disproportionate share of the habitat conversion projects included in the Delta Plan. Needless to say, we are quite interested in how the Delta Plan translates the commitment to "preserving unique agricultural values" of the Delta noted in the objective above translates into meaningful provisions in the Plan.

Our prior comments focused on local impacts of the Delta Plan, and in particular those impacts unique to Solano County. We have asked for more specificity in the Plan relative to clear provisions for consultation with local agencies and counties, and evaluation of local impacts. There should also be clear language in the Plan for minimizing impacts and full mitigation to local agencies and communities where impacts will occur.

Unfortunately, the second draft still contains a dearth of references to the role of local agencies in the Delta Plan framework other than a couple of vague references to impacts and mitigation. We believe this is a glaring omission in the Delta Plan and a failure to recognize the value that local entities could have in collaborative long-term planning efforts. We believe that without a plan framework that is inclusive of local interests, the likelihood of the Delta Plan achieving its intended purpose is greatly diminished.

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Mr. Joe Grindstaff
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It is notable and disturbing that the second draft not only fails to address prior comments on the lack of reference to local government's role and interests; it also seems to move in a direction that further usurps local land use regulatory authority in the Delta and possibly beyond. The section on "Certification for proposed covered actions" appears at first review to greatly expand the authority of the Delta Stewardship Council (DSC). The section is riddled with legalese and lack of clarity. Specific concerns include:

1. The findings are written in a way that might result in a de-facto moratorium on land use actions in covered Delta areas, including areas that might be subject to Plan implementation such as habitat restoration areas. Unfortunately, because we presently only vaguely know where habitat projects might be located; the umbrella this might cast is quite broad and may result in an economic chokehold that could destabilize Delta communities.
2. The possible inclusion of certain "out of Delta" actions under regulatory scrutiny of the DSC would only exacerbate concerns over the boundaries of the DSC's regulatory authority. Under the broadest interpretation of this process, the DSC could have oversight over projects far from the Delta proper. This provision needs much greater scrutiny and further revision.

Attached are our prior comments on the first draft. We urge you to re-review them for further consideration as you prepare for the third and fourth drafts of the Plan. Also attached are several additional comments on the second draft.

Our overall impression is that the timing and frequency of each subsequent draft is not serving the public interests in a positive way. There is simply no way that DSC staff can give thoughtful consideration of comments while preparing successive drafts that are only weeks apart. We would reiterate earlier comments that the arbitrary statutory deadline driving this process is resulting in subversion of a meaningful public process. The importance of the public policy issues that are at stake deserves a process that is more thoughtful and less rushed.

Sincerely,



Bill Emlen, Director
Resource Management
County of Solano County

Attachments

cc: Solano County Board of Supervisors
Birgitta Corsello, Assistant County Executive
Delta Counties Coalition
David Okita, General Manager, Solano County Water Agency
Mike Hardesty, General Manager, Reclamation District 2068
Steve Chappell, Suisun Resource Conservation District

CHAPTER SPECIFIC COMMENTS

Chapter 1

- The bottom of the first page says that "it is also the policy of the State "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." If this type program is to be successful it should be linked directly to a broad public education process and the document should state this.
- Page two says that "achieving the coequal goals and inherent objectives will be a complicated and lengthy undertaking. It will require an unprecedented level of coordination and cooperation among state, federal, and local governments as well as all residents of California." That said, it would appear reasonable for the Council to develop mechanisms to facilitate coordination and cooperation among all involved entities.
- The section that includes the geographic scope and use of the Delta Plan describes "covered actions" under the purview of the Delta Stewardship Council that appear to exceed its legislatively mandated authority. This is troubling and problematic because, without a well-founded and agreed on legal basis for its authority, the credibility of the Delta Plan will be open to dispute and challenge before it is complete.

Chapter 3

- The requirements included in the section that describes submissions of certification for proposed covered actions are onerous for local stakeholders without identifying a true benefit for the effort. This request is not reasonable.
- It is good to see the full financial support and procedure associated with the adaptive management process on the seventh bullet on page 23. Please clarify if this includes local governments and communities.
- On page 27, GP R2. The scope of this proposal should remain limited to the Delta. The Suisun Marsh already operates under the purview of the Bay Conservation and Development Commission. Agreements should be sought that do not diminish or change the existing authority.

Chapter 4

- On page 31, WR P5, in reference to future transfer agreements, the third bullet references an expected range of operations and maintenance costs. This should include an impact analysis with the range of actual operations, timeframe, necessity and beneficiaries to keep the entire process transparent and to ensure private wealth is not attained from use of a public resource.
- On page 31, WR P6 states that "no project shall be constructed within the alignment of a conveyance facility or Ecosystem Restoration Opportunity Area, as described in section 85057.5(c), unless the project is consistent with the intent of the plan or the construction is required to avoid a regulatory taking. Solano County believes this "moratorium"-like language creates an inappropriate level of regulation and should be removed.
- On page 31, WR P8 refers to "...develop(ment) and implement(ation) of a sustainable rate structure that encourages and supports water use efficiency that includes, but is not limited

to, a tiered rate structure." Solano County recommends collaboration to ensure information regarding the best programs is replicated and shared broadly.

Chapter 7

- On page 41, RR P6 says that "No covered action in the following geographical areas shall diminish existing or potential value as flood plains except as provided in this Delta Plan: Areas located in Yolo Bypass (Fremont Weir to Cache Slough, including the confluence of Putah Creek into the bypass) and through the Cache Slough area to the Sacramento River." Solano County is concerned with potential impacts and would like to have this statement fully explained in lay terms.
- Solano County does not support recommendations RR R2 and R3 that remove state liability for damages arising from the failure of a state flood control project. These recommendations should be removed.

Chapter 8

- The section regarding the Delta as an evolving place should include information regarding the conveyance system; its size, and how it will function to avoid adverse impacts on overall freshwater flows through the Delta and into the Bay system. The County has concerns that any system implemented maintains adequate flows to meet the needs of local water users with no impacts on existing allocations. There must be sufficient flows to prevent salinity intrusion further into the Delta so protections required by the Suisun Marsh Plan are adhered to.



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Bill Emlen, Director

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March 10, 2011

Mr. Joe Grindstaff, Executive Officer
Delta Stewardship Council
990 Ninth Street, Ste 1500
Sacramento CA 95814

Re: First Draft of Delta Plan/Solano County comments

Dear Mr. Grindstaff,

Solano County appreciates the opportunity to comment on the initial draft of the Delta Plan. We recognize that much work is left to be done and that what has been released is just a snapshot of the final plan. Our comments are made with that in context.

Solano County is one of the core Delta counties that will be directly and potentially adversely impacted by your Delta plan, at least as we are currently aware of it. Our understanding is that potentially tens of thousands of acres of prime Solano County farmland could be slated for habitat restoration projects. We understand the Stewardship Council's primary purpose is to adopt a Delta Plan addressing the co-equal goals of "providing a more reliable water supply for California" and "protecting, restoring, and enhancing the Delta ecosystems." These goals are laudable and quite challenging. Your cover letter to the first draft plan acknowledges, in spite of these goals, that "California's total water supply is already oversubscribed" and "even with substantial ecosystem efforts, some native species may not survive". Such candor is appreciated, but also discouraging. It would be very hard for residents of Solano County to accept the conversion of many acres of prime farmland in our Delta area (and the associated adverse impact to our local agriculturally-based communities, and residents' livelihood) for habitat restoration - adversely affecting our economy to improve that of other communities within the state). That is especially true if the Delta Plan in the end does not achieve its intended purpose.

Needless to say, we believe this process needs to move forward in a slower, more deliberate fashion. It also needs to be truly inclusive of all interests, and not be driven by a powerful few with greater resources to commit to this process. Thorough and objective peer-reviewed science must be the basis for all plan provisions. Expedience to meet artificial statutory deadlines or to appease various interests must be tempered for the sake of public policy that is fair and comprehensive.

At this stage of Delta Plan preparation, it seems significant issues are still being analyzed. Paramount is the conveyance system; its size, and how it will function to avoid adverse impacts on overall freshwater

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flows through the Delta and into the Bay system. The County admittedly has limited expertise to comment in this area but does have concerns that any system implemented maintains adequate flows to meet the needs of local water users with no impacts on existing allocations. We also want to ensure that sufficient flows are provided so as to prevent salinity intrusion further into the Delta, adhering to protections required by the Suisun Marsh Plan.

A scenario of particular concern to the County is reduced flows through the Delta rendering the existing and contemplated habitat restoration efforts in the Bay Delta ineffective in achieving their intended purpose. In essence, there is a risk of considerable disruption of very productive and sustainable agricultural activities for no good purpose in the end. This highlights the need for objective and thorough scientific analysis before any final decisions are rendered. We believe the push by some interests to move forward with some Delta initiatives before the various Delta planning efforts and analytical work is complete to be fraught with potential negative and irreversible consequences.

Solano County recognizes the statewide water and environmental goals that the Delta Plan must balance. We note the requirement in state and federal law that local interests are also included in the equation and we hope that it is reflected as the plan evolves. The current draft reveals very little, if any, consideration of local concerns. It is our belief that partnerships with local entities will be essential if the plan is to achieve any of its intended purpose. Habitat restoration is a case in point. If it is carried out piecemeal, it is highly unlikely viable agricultural activities within a targeted area will be able to successfully co-exist. We also believe levee maintenance could be compromised. Critical components to agricultural operations such as access, support infrastructure, and reasonable and responsible operational controls, are also likely to be negatively impacted by piecemeal habitat project implementation. The impacts might be gradual, but would ultimately lead to the proverbial “death of a thousand cuts”.

Solano County strongly believes the Delta Plan can proactively address this issue through inclusion of a clearly defined and structured consultation process with counties and other local entities impacted by implementation of components of the Delta Plan. This is of particular importance to Solano County because of the amount of land targeted in the County for conversion to habitat areas. The consultation process should early on require preparation of specific master plans for areas that might be converted to habitat restoration projects. Such plans could be cooperatively prepared by the local governments with land use authority and the agencies preparing habitat projects. The master plan process would allow agricultural and other local economic and ecosystem interests who know the local environment and infrastructure to participate in the crafting of plans that would lead to compatible co-existence. The consultation process should also include procedures and criteria for determining impacts and both the commitment and financing to fully mitigate those impacts. We have heard through various sources and at various venues that the state and federal agencies and the water contractors are prepared to consider offset impacts to local agencies resultant from implementation of Delta plans and projects. Thus far, commitments of this type have not appeared in any of the plans and policies that are being developed. The Delta Plan provides a prime opportunity to be clear and unequivocal on the requirement for minimizing local impacts.

Provided below is a summary of Solano County priorities and concerns relative to the many Delta initiatives that are underway. These have been provided in several prior comment letters, and they remain relevant to this phase of the process, given they have yet to be addressed.

- **Economic impacts of land conversions**—Creation of new habitat lands could have local adverse economic impacts such as lost property taxes and assessments, third party impacts and direct costs (such as mosquito abatement, law enforcement and rescue) and potentially irreversible economic impacts to the existing regional communities that are dependent on agriculture as their life blood for existence. To mitigate these impacts, the following actions should be considered:
 - Support for economic mitigation
 - Adequate funding to ensure the economic sustainability of Delta communities

- Payment for third party impacts
- In-lieu of payments for property tax revenues lost as a result of conversion of productive private lands to public ownership
- Full mitigation for the loss of agricultural land that will be taken out of production
- Fiscal support to manage impacts of habitat restoration over the long term.

Urban and Ag Runoff/Discharges—the establishment of habitat projects in Restoration Opportunity Areas is expected to result in increased fish populations, many of which will be Endangered Species Act/California Endangered Species Act (ESA/CESA) listed. This may result in increased regulation of runoff and discharge from areas that drain into Restoration Opportunity Areas (ROA's). This is a substantial part of Solano, Yolo and Colusa counties. Legal/legislative relief will be necessary to ensure that agricultural and water operations are not impeded; including municipal and agricultural intakes.

Endangered Species Act—Agricultural diversions in the ROA's could be required to modify operations, be screened or consolidated due to concern of their impact to endangered species, at great expense to the diverters who are mostly private landowners (with some public agencies). To address these impacts, the following actions should be considered:

- Obtain "safe harbor" coverage for incidental harm to aquatic endangered species for individual agricultural water diverters in the Cache Slough area in the Bay Delta Conservation Plan.
- Provide funding for fish screens on agricultural diversions if required, as was done for "San Joaquin River Settlement.

Levee Maintenance--Provide funding for levee maintenance and improvements in the short and long term (based on the use of broad based fees). Specifically analyze impact of Ecosystem Restoration projects on flood management and totally fund measures to mitigate increased risk.


Local Government Impacts--Ensure the flood control system is not compromised by the state or federal government to facilitate conveyance or habitat development and recognize that some of these efforts will impose potential hefty regulatory impacts on local government that should be mitigated in coordination with the local government.

Ensure that local government resources are protected.

- Local governments need to be held harmless with good neighbor agreements.
- Delta Counties and municipalities and local special districts should not be harmed in this process—Delta Counties (including communities) need to be protected from further erosion loss.

In concluding our initial comments on the first draft Delta Plan, attached are some additional comments on various sections of the Plan. It is the County's hope that they will be seriously considered as the Delta Plan continues to evolve.

Sincerely,



Bill Emlen, Director
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Cc: Solano County Board of Supervisors
Birgitta Corsello, Assistant County Executive

CHAPTER SPECIFIC COMMENTS

Chapter 1

- The co-equal goals are to be pursued in a way that "protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place." What steps are being taken to ensure that this part of the co-equal goals are more than just eloquent policy but activate a basis for long-term policy that provides protections for Delta communities?
- Chapter 1 says that the Delta Plan will be successful if it allows California to move forward on the key statewide concerns, while recognizing the uniqueness of the Delta and Suisun Marsh. Solano County believes that the success of the Delta Plan includes providing protections and recommends that the words at the top of page 1-2 be changed as follows, "...California to move forward on the key statewide concerns, it must preserve, protect and mitigate for impacts of plan implementation to the Delta and Suisun Marsh, thus recognizing the uniqueness and ecological, historic and economic importance of these areas."
- On page 1-6 of Chapter 1, three bullets list items that should be considered for the Delta Plan. The last bullet states that "California state government cannot guarantee the Delta will be free from threats of flood, earthquake, or other natural disasters." What is the secondary plan if and when any of these events happen? If the state is ultimately responsible to respond to such events, how can it prepare itself now to address unplanned future events?

Chapter 3

- A discussion of financing the coequal goals should include secure sustainable funding outside of the State General Fund process so dedicated resources cannot be diverted to handle other issues.

Chapter 4

- Although the concept of adaptive management appears to have many benefits, how beneficial can it be if changes have unintended consequences and are irreversible? It seems reasonable that changes would best be made in moderate, reversible increments. Additionally, for this process to be effective, adequate funding in perpetuity must exist before changes are system changes are made. Solano County recommends that any funding source be created to exist outside the General Fund process so dedicated resources cannot be diverted to address other issues.
- On page 4 of this chapter it discusses the five steps of the plan part of the adaptive management process. Yet, there is no public process incorporated into this model that allow for issues to be raised in lay terms and discussed in ways that elected officials and members of the community can understand.

Chapter 5

- Water transfers should be clearly defined with examples provided of various kinds of transfers and why these work or create problems.

Chapter 6

- In the Restore or Protect Habitat Section it states that "Suisun Marsh, while mainly seasonal managed wetlands, is lacking natural habitat diversity." Is this really true? Based on 11 year Suisun Marsh charter planning process just concluded, this is demonstrably false. What is the basis for this statement?

Another finding is that the processes for obtaining project-specific permitting and authorization are not well coordinated, which could delay progress on ecosystem restoration. Please see comments in the primary memo regarding inclusion of local concerns in the Delta Plan.

The finding regarding a lack of current scientific infrastructure and expertise to support the science and adaptive management needed for successful ecosystem restoration and suggests a specific governance structure is necessary to support this effort. Existing governance structures should be reconfigured to address any concerns in this area. It will be important to ensure that exporters are not given responsibility to police themselves.

- Suggest adding the following item to "Working Categories of Potential Policies and Recommendations":
 - Protecting Delta communities and business interests.

Chapter 8

- The findings related to emergency preparedness should include any linkages to Bay Area plans such as the Suisun Marsh Protection Act/Plan, Bay Area UASI, ABAG, and Bay Conservation and Development Commission (BCDC) and their communities.